

pages 53 and 54 of the parent application 09/515,124 be added to the specification under MPEP § 201.06. According to the Examiner, the reason pages 53 and 54 of the parent application 09/515,124 ("the '124 application") were not entered under MPEP § 201.06 was because the '124 application was not properly incorporated by reference into the instant specification. The Examiner contends that the transmittal sheet of the instant continuation application was filed with a request to amend the specification by adding the following sentence before the first line of the specification: "This is a continuation of application Serial No. 09/515,124 filed February 27, 2000." Therefore, this sentence is a complete statement with regard to the '124 application and did not incorporate it by reference into the specification at the time of filing. The next sentence of the instant application as filed on January 17, 2001 would then have read:

This application is a divisional application of U.S. Application No. 09/276,820, filed March 26, 1999, entitled "Compositions and Methods for Non-Targeted Activation of Endogenous Genes," naming John J. Harrington, Bruce Sherf, and Stephen Rundlett as inventors, which is a continuation-in-part of U.S. Application No. 09/263,814, filed March 8, 1999, which is a continuation-in-part of U.S. Application No. 09/253,022, filed February 19, 1999, which is a continuation-in-part of U.S. Application No. 09/159,643, filed September 24, 1998, which is a continuation-in-part of U.S. Application No. 08/941,223, filed September 26, 1997, the disclosures of all of which are incorporated herein by reference in their entireties.

Based upon the above portion of the specification, Applicants can show that the instant application properly claims priority to earlier related applications and incorporated the disclosures of each by reference in their entireties. The parent 09/276,820 application filed March 26, 1999, also contains the missing pages 53 and 54. Therefore, the first requirement of MPEP § 201.06(c) is satisfied. With regard to the second requirement of MPEP § 201.06, the '897 application is entitled to its January 17, 2001 filing date

notwithstanding the missing pages 53 and 54. Inspection of the missing pages show that these pages are at the beginning of the detailed description section of the specification, and provide only a general description by the Applicants, of cells made using the invention of various species of eukaryotes and preferred cell lines, and general methods of derivation and use of these cells. The detailed description continues for another 100 pages, and the actual examples of embodiments do not begin until page 119 of the specification. These missing pages are not critical for the claimed invention, and therefore, Applicants have satisfied this requirement of MPEP § 201.06(c) as well. As such, Applicants respectfully request that pages 53 and 54 of the '820 application be added to the instant application.

Notwithstanding the above, the Applicants also respectfully traverse the Examiner's reasons for denial of the incorporation by reference of the '124 application. Applicants respectfully point out that the instant application did properly incorporate the '124 application by virtue of the "failsafe" paragraph at the end of the specification at page 154, which states:

All publications, patents and patent applications mentioned in this specification are indicative of the level of skill of those skilled in the art to which this invention pertains, and are herein incorporated by reference to the same extent as if each individual publication, patent and patent application was specifically and individually indicated to be incorporated by reference.

Since the above paragraph was present at the time the continuation application was filed, and the specification was amended, at the time of filing, to include the sentence, "This is a continuation of application Serial No. 09/515,124 filed February 27,

2000.”, then the above paragraph should properly incorporate the ‘124 application by reference.

CONCLUSION

As such, Applicants respectfully request the Examiner amend the specification of the ‘897 application to include pages 53 and 54 of either the 09/276,820 application or the 09/515,124 application. With the addition of these pages, this amendment accords the ‘897 application its original filing date of January 17, 2001.

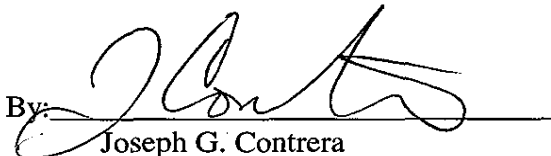
With entry of this amendment, substantive examination of the claims presented in Applicant’s response of December 20, 2001 is respectfully requested. If there are any questions or problems with this amendment, the Examiner is invited to contact Joseph G. Contrera at 703-683-3600 at the Examiner’s convenience.

Appl. No. 09/760,897
Atty. Dkt. No. 0221-0003OC

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 CFR §1.136(a), and any fees required therefore are hereby authorized to be charged to Deposit Account No. 50-0622, referencing Attorney Docket No. 0221-0003OC.

Respectfully submitted,

SHANKS & HERBERT

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